

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001503-MR

JANE ELLEN RANNENBERG (NOW HENDRICK)

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
CIVIL ACTION NO. 05-CI-00151

ORLANDO RANNENBERG, JR.

APPELLEE

OPINION
AFFIRMING

** ** * * * * * **

BEFORE: DIXON AND VANMETER, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Jane Ellen Rannenberg (now Hendrick) appeals from a Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage of the Warren Circuit Court. Jane argues that the trial court erred in its division of marital property and denial of maintenance from her now ex-husband, Orlando Rannenberg, Jr.

We affirm.

¹ Senior Judge John W. Graves, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Orlando and Jane were married on September 1, 2002. No children were born of the marriage. Orlando, born March 17, 1943, is retired from General Motors. Jane, born September 17, 1946, continues to work part-time. During the marriage, the parties resided in a home located at 406 Drakesborough Drive in Bowling Green, Kentucky. Orlando purchased the home in 1980 for \$121,000. In 1999, following a previous marriage and divorce, Orlando had the home appraised and it was valued at \$191,000. That same year, Orlando used the Drakesborough residence to secure a loan to purchase other land. Said loan was the only debt secured by the Drakesborough property.

Prior to July 1, 2002, the parties decided to marry and sought to remodel the Drakesborough home. On July 1, 2002, Jane gave Orlando \$90,000 to be used for the remodeling. At Jane's urging, Orlando executed a quit claim deed that same day after taking possession of the \$90,000. The deed provided that the parties were joint tenants in the Drakesborough property with a right of survivorship. Although the deed appeared absolute on its face, both parties testified that the purpose of the deed was to ensure that Jane would get her \$90,000 back in the event that Orlando died prior to the marriage in September.

In August 2002, prior to the parties' marriage and at Jane's request, the mortgage on the Drakesborough property was refinanced and the property was appraised at \$265,000. According to expert testimony taken at the divorce hearing, the increase in value was attributed to the remodeling efforts of the parties. The refinancing netted the parties \$14,922.29, the entire amount of which was used for the remodeling project.

Additionally, Orlando contributed \$25,393 of his non-marital funds towards the remodeling project such that the total cost of the remodeling was \$130,316. The parties separated in January 2005. Following the separation, Orlando hired Larry Halcomb to perform another appraisal of the property and he valued the home at \$282,000. The trial court found that the \$130,316 in non-marital funds spent by the parties on the remodeling of the Drakesborough home only netted a \$91,000 increase in actual value to the home. The trial court made that determination by subtracting the home's appraised value of \$191,000 in 1999 from its current appraised value of \$282,000 in 2005.

Orlando filed a Verified Petition for Dissolution of Marriage on January 27, 2005, and the parties were divorced by decree on March 20, 2006. Shortly thereafter, Jane filed a motion to alter, amend and/or vacate the decree. Following a hearing, the trial court granted Jane's request to be restored to her maiden name, but otherwise denied the motion on July 3, 2006. This appeal followed. Such additional facts as may be necessary for clarity will be presented as each issue is discussed.

We begin with a general statement of our standard of review. The trial court's findings of fact will "not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Kentucky Rules of Civil Procedure (CR) 52.01. A finding of fact is clearly erroneous unless it is supported by substantial evidence. *Black Motor Co. v. Greene*, 385 S.W.2d 954, 956 (Ky. 1964). Substantial evidence has been conclusively defined by Kentucky courts as that which, when taken alone or in light of all the evidence, has

sufficient probative value to induce conviction in the mind of a reasonable person.

Secretary, Labor Cabinet v. Boston Gear, Inc., a Div. of IMO Industries, Inc., 25 S.W.3d 130, 134 (Ky. 2000). Legal issues will be reviewed de novo. *Sherfey v. Sherfey*, 74 S.W.3d 777 (Ky.App. 2002).

Jane first argues that the trial court erred when it failed to equally divide the parties' 2004 Buick Ranier as marital property. We disagree.

Jane contends that both she and Orlando each contributed \$5,000 in non-marital funds and \$6,500 in marital funds towards the purchase of the vehicle. The remaining \$12,500 was financed through GMAC. The trial court determined that “in order to effect an equitable division of the parties' marital assets, [Orlando] should be awarded the 2004 Ranier and be responsible for the outstanding indebtedness associated with said vehicle.” Jane avers that the trial court erred because it should have awarded her a pro rata share of the contributions she made towards the vehicle purchase.

The trial court's duty, pursuant to KRS 403.190(1), is to divide the parties' marital property in just proportions. Towards that end, the court is not required to equally divide each asset. *See Davis v. Davis*, 777 S.W.2d 230 (Ky.App. 1989); *Wood v. Wood*, 720 S.W.2d 934 (Ky.App. 1986). The trial court was aware of Jane's non-marital contribution towards buying the vehicle. To ensure Jane received an equal division of the marital property, the trial court awarded her the entire marital funds located in her checking account in the amount of \$8,506.65. Additionally, the trial court noted that Orlando made all of the vehicle payments after the parties separated. Further, the trial

court awarded Orlando the entire debt still owing on the vehicle (over \$10,000). In short, the trial court did not err in awarding the 2004 Buick Rainier to Orlando because Jane was adequately compensated by other marital property in “just proportions.”

Next, Jane argues that the trial court erred when it failed to award her half of the total equity found in the home located at 406 Drakesborough Drive. In the alternative, Jane argues that the court erred in failing to award her a full return on the \$90,000 investment she made in said property, plus interest. We disagree.

Based on the testimony given by both parties during the divorce hearing, the trial court found that “the deed executed by [Orlando] on July 1, 2002 was in fact a mortgage.” The trial court found that the parties only intended the quit claim deed to secure Jane's \$90,000 “investment in the Drakesborough residence until such time as the parties were married, whereafter [Jane's] money would be secured by her legal status as the wife of [Orlando].” Accordingly, the trial court found that Jane's “investment is presently secured by her share of the marital equity found in the home.”

In determining Jane's interest in the home, the trial court apportioned Jane 69% of the \$91,000 increase in value to the home realized from the remodeling project. The 69% figure represents Jane's portion of non-marital investment (\$90,000) she made towards the total remodeling cost of \$130,315.29. Thus, the trial court awarded Jane a total of \$59,790² for her share in the equity of the Drakesborough home.

² The actual total was \$62,790 but was reduced by \$3,000 which was the amount of temporary spousal maintenance Orlando paid Jane after the trial court determined that she was not entitled to permanent maintenance.

Jane contends that the quit claim deed entitles her to half of the total equity found in the home. Jane avers that the trial court erred when it determined that the deed was instead actually a mortgage meant only to secure her \$90,000 investment. However, based on Jane's own testimony, she admitted that the only reason the “deed” was executed in the first place was to ensure she would get her money back in the event of Orlando's untimely death before the marriage. Contrary to Jane's argument, such parol evidence is admissible to establish that a deed absolute on its face is intended to be a mortgage, without allegation of fraud or mistake. *See Newsome v. Greer*, 314 Ky. 347, 235 S.W.2d 782 (1951).

Upon our review of the record, we determine, as did the trial court, that the “deed” executed by Orlando on July 1, 2002, was in fact a mortgage intended only to secure Jane's investment. Jane's original investment was \$90,000. However, after the parties' marriage, Jane's investment was secured only by her proportionate share of the marital equity found in the home, rather than a full return of the \$90,000 plus interest. The record establishes that investments to real property, such as the remodeling undertaken by Orlando and Jane, do not always amount to a dollar for dollar or greater increase in value. Here, Orlando and Jane shared equally in the risk that their respective investments would not pay off as intended. The trial court's well-reasoned findings of fact and conclusions of law regarding the Drakesborough property were not erroneous.

Finally, Jane argues that the trial court abused its discretion in failing to award her permanent maintenance. Again, we disagree.

An award of spousal maintenance will only be ordered if the trial court finds that the spouse seeking support:

- (a)Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and
- (b)Is unable to support himself through appropriate employment

KRS 403.200(1). The decision to grant or deny a maintenance award lies within a trial court's sound discretion as it applies the governing factors of KRS 403.200 to the circumstances of the parties. *Leveridge v. Leveridge*, 997 S.W.2d 1, 2 (Ky. 1999).

Here, the court properly considered all the relevant statutory factors including the marital property apportioned to Jane, her ability to support herself through continued employment at both part-time jobs, Jane's rent-free living arrangement, the brief duration of marriage (27 months), as well as Jane's age and health. Upon a thorough review of the record, we conclude that the court's decision was based upon substantial evidence and that it did not abuse its discretion when it denied Jane's request for maintenance.

Accordingly, the judgment of the Warren Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David F. Broderick
Jeffrey B. Traugher
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Kenneth A. Meredith, II
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